THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

W.P.NOs.26072, 27820 OF 2005,
3110, 3487, 4656 & 1015 OF 2006

ORAL COMMON ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

Sir Winston Churchill commented about one of his contemporaries that the man had an uncanny knack of looking at things from the wrong end of a municipal drainpipe.

Such a practice is made a fine art by the Administrators of the State of Andhra Pradesh and perhaps they believe that it is justified when they are dealing with a body, whose business is to handle the sewerage of the Hyderabad City.

Any inhabitation needs a source of drinking water and a proper organization to handle the polluted water generated by the mankind day-to-day in the inhabitation. The Hyderabad city, like any other major city in the country, has its own share of owes in handling these problems. Until 1989, the system dealing with the supply of drinking water to the inhabitants of the Hyderabad city was handled by the State of Andhra Pradesh through the personnel belonging to the services called "the A.P. Public Health and Municipal Engineering Subordinate Service and the A.P. Public Health and Municipal

Subordinate Service", while the disposal of the waste water was being handled by the Municipal Corporation of Hyderabad through its employees. For the purpose of carrying out the abovementioned twin tasks, various works were undertaken both by the State and the Municipal Corporation of Hyderabad.

In the year 1989, the Legislature of Andhra Pradesh thought it fit to entrust both the functions referred to earlier to a statutory body and therefore, made an enactment called "the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 (Act 15 of 89) (for short '1989 Act'). Under Section 3 of the Act, the Government is mandated to constitute a Board by the name of the Hyderabad Metropolitan Water Supply and Sewerage Board (hereinafter referred as 'the Board'). It is further specified that the Board shall be a body-corporate having perpetual succession and a common seal with powers to acquire, hold and dispose of properties, enter into contracts etc. The constitution of the Board is also specified therein. The ex-officio Chairman of the Board is the Chief Minister of Andhra Pradesh; The Minister for Municipal Administration is the ex-officio Vice Chairman; Three Secretaries of the Departments of Housing, Finance and the Irrigation, are to be Members of the Board; The Commissioner of the Hyderabad Municipal Corporation, the Chairman of the A.P. State Pollution Control Board, the Director of Medical, Health Services and a Chief Engineer of the Board to be appointed by the Government, etc.

Section 7 of the Act, describes the general duties of the Board and it reads as follows:

> 7. General Duties of the Board:-- (1) It shall be the duty of the Board to provide for:-
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> (a) The supply of potable water, including planning, design, construction, maintenance, operation and management of water supply system; and
> (b) Sewerage, sewage disposal and sewage treatment works including planning, design, construction, maintenance, operation and management of all sewerage and sewage treatement works; in the Hyderabad Metropolitan area.
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> (2) For the efficient discharge of the duties entrusted to it, the Board shall exercise such powers and perform such functions as are conferred or imposed by or under this Act:
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> Provided that no scheme, the estimated cost of which exceeds rupees ten crores, shall be carried out by the Board except with the previous approval of the Government."

For the purpose of enabling the newly constituted Board to fulfill the tasks entrusted to it under the Act, the Legislature thought it fit to declare under Section 17 of the Act that all Public reservoirs, tanks, cisterns, fountains, wells, and bore wells, pumps, pipes, taps, conduits and other works connected with the supply of water to the `Hyderabad Metropolitan area', a defined expression under Section 2(f) of the Act, shall vest with the Board and are subject to its control. Section 18 further authorizes the Board to undertake any new

construction, which in the opinion of the Board is necessary for the maintenance of the services required to be undertaken by the Board, indicated under Section 7 of the Act. Examination of the various other provisions of the Act may not be necessary for the purpose of the present case, except Section 113 and few other sections. Section 113 of the Act, reads as follows:

> "113. Provisions to employees employed in connection with water supply and sewerage undertakings:- (1) Every officer and other employee employed with the Hyderabad Metropolitan Water Works and sewerage and sewage treatment works as the case may be, shall stand transferred to and become an officer or other employee of the Board with such designations as the Board may determine and shall hold by the same tenure, at the same remuneration the same terms and conditions of service applicable immediately before such transfer and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Board:
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> Provided that any service rendered by such officer or employee before such transfer shall be deemed to be service rendered under the Board.
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> (2) Every officer or employee of the Andhra Pradesh Public Health and Municipal Engineering Service and the Andhra Pradesh Public Health and Municipal Engineering Subordinate Service serving in the posts not below the rank of Assistant Engineer in the Hyderabad Metro Water Works or Sewerage and Sewage treatment works shall continue to serve in the Hyderabad Metro Water Works or Sewerage and Sewage treatment works under the same terms and conditions

applicable to them in their parent Department and until their absorption is finally determined by the Board in accordance with the rules and regulations made for this purpose under this Act :

Provided that an officer or employee shall be given an opportunity to opt for the service of the Board or to remain in the service of his parent department.

(3) The Board may employ any officer or other employee transferred under sub-section (1) in the discharge of such functions under this Act, as it may think proper and every such officer or other employee shall discharge those functions accordingly."

Sub section (1) of Section 113 declares that every officer or employee with the Hyderabad Metropolitan Water Works and Sewerage and Sewage treatment works stood transferred and become an officer or an employee as the case may be of the Board. In substance, those officers and employees who were working in connection with the operation of supply of drinking water to the Hyderabad city or disposal of the waste water of the Hyderabad city, (though as noticed earlier, are the employees of the State of Andhra Pradesh and the Municipal Corporation of Hyderabad), are mandated by the Legislature to be transferred to the newly constituted Board which is a distinct legal entity.

But for the legislative mandate none of the above mentioned personnel would have any legal obligation to serve the newly constituted Board. While compelling them to work with a new master (Board), the Legislature

also took care to see that their freedom of choosing their employer is not unduly restricted and therefore, stipulated further under Section 113 that the various service conditions which were applicable to each one of them prior to the transfer contemplated under Section 113, are maintained intact. It further gave an option to each one of them either to continue with the newly constituted Board or stay back with their original employer. The Board is also given the liberty either to accept the option exercised by any one of the employee, however, such a decision either to accept the option of the employee or not is required to be made in accordance with the rules and regulations to be framed by the Board. The Board being an instrumentality of the State, is obviously under a duty to act rationally in arriving at such decision, an obligation inherent in the very nature of the decision making process of such bodies.

A close scrutiny of Section 113 is required having regard to the issues involved in the present case, but the same would be undertaken at the appropriate place in the judgment. Whatever indicated earlier is only the broad scheme of Section 113.

As a matter of fact, on the constitution of the Board, a large number of personnel of various ranks were compelled to continue working with the newly constituted Board in view of the mandate contained under Section 113. It appears that certain regulations were framed by the Board dealing with certain service conditions of the employees of the Board in its Proceedings dated 30th

January 1992.

Chapter-IV of the regulations purports to deal with the absorption process of the employees contemplated under Section 113. It appears that some of the employees who stood transferred exercised their options. Though there is some dispute regarding the fact whether the Board has in fact taken a decision either to accept or reject the options exercised by the employees to continue in the service of the Board, it is not really necessary for the present to examine the said issue.

This compulsion created under Section 113 on the employees of either the State of Andhra Pradesh or the Municipal Corporation of Hyderabad, resulted in a lot of litigation over a period of 16 to 17 years so far.

The history of the litigation insofar as it is relevant for the present purpose is as follows.

A batch of original applications in O.A.No.5792 of 2003 and others came to be filed before the Andhra Pradesh Administrative Tribunal, and the same was disposed of by a Division Bench of the Tribunal on 29th October 2004. The issue involved in the said batch of cases is whether the decision of the Government of Andhra Pradesh in seeking to withdraw the services of some of the applicants before the Tribunal from the service of the Board or the decision of the Managing Director of the Board to relieve some of the employees of the State Government, who were working with the Board, were legal and valid. One of the questions of law that fell for the consideration in the abovementioned batch of

original applications is the applicability of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (for short referred as 'the Presidential Order') to the Board. The Tribunal, in substance, recorded a finding that certain parts of the Presidential Order have no application to the local bodies like the Board and the remaining portions of the Presidential Order are applicable. The correctness of the said decision would be examined later.

Aggrieved by the said decision of the Tribunal, three writ petitions came to be filed in this Court, viz., W.P.Nos. 22365, 22886 of 2004 and 20956 of 2005.

Apart from the decision of the Tribunal as to the applicability of the Presidential Order to the Board, the Tribunal came to the conclusion that some of the orders under challenge in the batch of OAs referred to earlier, were orders which could not be sustained, as such orders came to be passed on a wrong premise, notwithstanding the fact that the authority which passed the order had the necessary power to pass such orders. It appears that when the three writ petitions referred to earlier, were admitted, certain interim orders came to be passed by this Court, in substance, suspending the operation of the common order passed in the batch of the Original Applications by the Tribunal, thereby leaving it open both to the State and the Board to deal with the applicants without any reference to the decision of the Tribunal. It further appears from the record that

complaining that the abovementioned interim orders of this Court, are deliberately disobeyed Contempt Cases also came to be filed in this Court, and it appears that during the pendency of the contempt cases, the respondents issued various orders on 16th, 17th and 18th of November 2005, in purported compliance of the interim orders of this Court.

The above referred orders of 16th, 17th and 18th of November, 2005 are issued by the Secretary to Government, the Engineer-in-Chief, Public Health Department, Hyderabad and the Managing Director, Hyderabad Metropolitan Water Supply and Sewerage Board respectively. The substance of the order of the Government of Andhra Pradesh dated 1.11.2005 is that the Government directed the Engineer-in-Chief to withdraw the Deputy Executive Engineers and Assistant Executive Engineers belonging to Zones-I to V be withdrawn from the service of the Board and repatriate to the respective Zones to which they originally belonged. The orders dated 17th and 18th are consequential orders to the orders dated 16th November, 2005.

Challenging the above mentioned orders, five Original Applications viz., O.A.Nos.1109, 1111, 1189, 92 and 685 of 2006 were filed by the persons affected by the said order. In the meanwhile another O.A. vide O.A.No.18721 of 2005 was filed by some of the persons working with the Board who belong to Public Health and Municipal Engineering Services, but were posted to the

Board subsequent to the commencement of 1989 Act and have been working with the Board as such. They claimed in the said O.A that restricting the option contemplated under Section 113(2) of the Act of 1989 to only those persons who stood transferred to the Board pursuant to the mandate under Section 113(1) of the Act, 1989 and not giving such an option to those who were posted to work with the Board subsequent to the formation of the Board, is illegal and violative of Article 14 of the Constitution of India. It appears that some more O.As seeking a similar relief as one sought in O.A.No.18721 of 2005 were pending on the file of the A.P. Administrative Tribunal. They were filed by persons who had at some point of time or other worked with the Board, but not on the date of the commencement of the Act. During the pendency of those various applications, the Government of A.P. issued G.O.Ms.No.321 MA, Municipal Administration & Urban Development (C2) Department, dated 16.04.2005, the relevant portion reads as follows:

> "1. The Hyderabad Metropolitan Water Supply and Sewerage Board was constituted in the year 1989 through the Act 15, of 1989 and it has come into functioning as an autonomous body with effect from 01-11-1989 through the notification.
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> 2. In the G.O. 2nd read above, Government have accorded approval to the Draft Service Regulations of the Hyderabad Metropolitan Water Supply &

Sewerage Board as finalized by the Sub-committee constituted for the purpose under section 80 of Hyderabad Metropolitan Water Supply & Sewerage Act.

3. In the reference 3rd to 5th read above, there are number of cases filed before the Court and the same have been still pending on the question of absorption of Engineering personnel in HMWS&SB. Hence, there is dire need for the Government to take a decision and set at rest the legal battles pending before the Courts.

4. In pursuance to the above, the Government have convened a meeting on 9-3-2005 with the Engineer-in-Chief (Public Health) and the Managing Director, HMWS&SB along with all the recognized service Associations of P.H. & M.E. Department and HMWS&SB.

5. In the references 6th to 8th read above, the Recognized Services Associations of P.H. & M.E. & HMWS&SB have expressed their opinions and ultimately agreed to abide by the decision taken by the Government in the matter.

6. After careful examination of the matter and to put an end to unending litigation, for better and efficient functioning of the HMWS&SB and also to improve promotional opportunities to the Engineering personnel in the HMWS&SB, the Government under Section 80/81 of Hyderabad Metropolitan Water

Supply & Sewerage Board Act, (Act No.15 of 1989) hereby order to finalize the options exercised in the year 1992, and Sub-sequent options, if any, given by those persons who were working in the Board as on 01-11-1989 shall also be taken into consideration.

7. The Managing Director, HMWS&SB and the Engineer-in-Chief (P.H.) Hyderabad are directed to finalise the options exercised in the year 1992 and subsequent options, if any, given by those persons who were working in the Board as on 01-11-1989 shall also be taken into consideration. 15 days time may be given to the candidates who have been absorbed in the Board for considering their services in the Board.

8. The entire process must be completed expeditiously."

In this batch of O.As, the Tribunal declined to grant any relief by its order dated 01.12.2005. Insofar as the other set of O.As where the proceedings of the Government dated 16.11.2005 were questioned, the O.As were admitted but, the Tribunal declined to grant any interim relief sought for by the applicants. Therefore, the applicants approached this Court by these various writ petitions.

The writ petitions were admitted and certain interim orders were granted suspending the orders challenged in the above-mentioned O.As.

In view of the complications involved in this batch of writ petitions having regard to the fact that the litigation regarding the absorption of employees into the Board is pending quite for some time and repeatedly this Court faced with issues pertaining to this absorption into the service of the Board, this Court thought it fit to direct that all the writ petitions be heard at an early date. Accordingly, the writ petitions were listed.

Insofar as the writ petitions filed aggrieved by the decision of the Tribunal not to grant interim relief in favour of the applicants who challenged the decision of the Government dated 16.11.2005 is concerned, a preliminary objection was raised by the learned counsel for the contesting respondents Sri Bala Krishna Murthy and Sri D.V.Seetharama Murthy that normally this Court would not interfere in a matter where the main application is pending before the Tribunal and the Tribunal only directed notice in the Miscellaneous Applications seeking interim orders. In our view, the preliminary objection need not deter us from examining the various issues involved in this batch of writ petitions for the reason that on more than one occasion various Divisions Benches of this Court held that in an appropriate case this Court would still exercise the jurisdiction under Article 226 of the Constitution wherever the ends of justice demands such intervention.

As already pointed out it is not perhaps the grievance of the individual petitioners that warrants an

examination of the issue in this batch of cases, but the fact that this litigation pertaining to the Board in the context of absorption is proceeding endlessly and no pronouncement on the correct legal position governing the issue is available from this Court that compels us to examine the entire issue with a view to put an end to the litigation – hopefully!

Since all these writ petitions raise issues which are inter connected, it is agreed by the counsel appearing for various parties in this batch of writ petitions and believed by the Bench that it is better that all these writ petitions are heard and disposed of together and accordingly all these writ petitions were heard together.

The undisputed facts based on which the issues involved in this batch of writ petitions are required to be decided are:

(1) Under the 1989 Act a statutory body like the Board, having powers and obligations created under statute including the authority to enter into contracts and make appointments to the various posts under the body for discharging the functions under the Act is created;

(2) the State of A.P. in the Department of Public Health and Municipal Engineering went on passing orders posting various officers from time to time to the Board,

(3) the Board never resisted such an exercise of power on the part of the State.

From the above three basic facts, the parties claim various rights and obligations. The employees of the State of A.P. governed by the Public Health and Municipal Engineering Service Rules, 1965 who were not posted to the various offices connected with the supply of drinking water to Hyderabad on the date of the commencement of 1989 Act, complain, that Section 113(2) insofar as it sought to be interpreted by the Board and the State as authorizing the absorption of only those employees who were in fact working in the posts connected with the above-mentioned operations on the date of commencement of the Act are only entitled to exercise an option either to join the service of the Board or stay back in their parent service is violative of Articles 14 and 16 of the Constitution of India since such an interpretation of Section 113(2) creates an artificial classification between the employees governed by the PH&ME Engineering Service on the basis of a mere accident of their posting on the date of the commencement of the Act.

The other legal issue, which is required to be considered in the present case is whether the posting of the Engineers of the PH & ME services belonging to Zones I to V to the Board is violative of the Presidential Order.

Under the Presidential Order, the posts of Deputy Executive Engineers in the service of the State of Andhra Pradesh are organized into a local cadre with reference to Zones specified in the Second Schedule to the Presidential Order. The City of Hyderabad is treated as a separate unit under Para 3 sub-para (6) of the Presidential Order, which enables the Central Government to notify the various departments in which the categories of posts are required to be organized into a separate cadre for the City of Hyderabad.

The objection of some of the contesting respondents is that the writ petitioners belong to the various Zones i.e. Zones I to V organized in terms of the Presidential Order and they could not have been posted in the Board.

Before we deal with the above-mentioned issues, we are required to deal with certain incidental issues.

The authority of the State to post any one of its employees to the Board is required to be examined. We have already noticed that under Section-3 of the 1989 Act the Board is declared to be a body corporate having perpetual succession and a common seal, with power, (subject to the provisions of this Act and the rules made thereunder), to acquire, hold and dispose of property, and enter into contracts, and shall by the said name sue and be sued.

Under Section-6 of the Act, the Legislature authorized the Board to appoint a Chief Engineer, Public

Health Engineer, and such other officers and employees as may be required to enable the Board to carry out its functions under this Act. In the ultimate analysis employment which creates master and servant relationship is essentially a contract; the Board is authorized to enter into such contract under Section-3 of the Act. When the State is deploying some of its employees to discharge various functions of the Board, such deployment is required to be under some authority of law. Such an authority can be conferred either by an express provision of a statute or by an understanding between the Board and the Government if the Board seeks the assistance of the State requesting that the service of some of the employees of the State be lent to the board, an arrangement, which is normally understood in the service jurisprudence, as deputation.

In the absence of either of the above-mentioned situations, the State would be plainly incompetent to post any one of its employees on an autonomous entity like the Board. Statutory bodies like the Board are required to function strictly in accordance with the provisions of the enactment under which they are created. No specific provision under the 1989 Act is brought to our notice to establish that either the State is invested with such authority to deploy its employees to the Board as it pleases or any material is placed before this Court to establish that the Board, at any point of time, requested the State to deploy some of its employees to enable the Board to discharge the duties entrusted to it under the

Act. Therefore, all the orders of appointment/posting made subsequent to the commencement of the 1989 Act of either officers or employees of the State to discharge functions under the board are plainly illegal and unsustainable, irrespective of the fact whether the Presidential Order is applicable to the employment under the board.

Numbers of employees of the State, as a matter of fact, have been deployed to the Board either under the orders of the Government or some times even under the orders of the Engineer-in-Chief, Public Health. Such orders were accepted without any demur by the Board, which is headed by a Chairman, who is none other than the Chief Minister of the State - an amusing state of affairs. Apparently the concept of autonomy of the bodies like the Board is more theoretical than real and meant for the consumption of the Courts, whenever such bodies find it convenient to assert their autonomy. The executive, both permanent and political, obviously, believe that the Board is another department of the Government and it did not matter to them whether in law the Board had certain rights, obligations and privileges. The state of affairs which is an obvious (though not a necessary and legal) consequence in view of the composition of the Board as specified under Section 3 of the Act, which is loaded with members of the executive.

Sri Nooty Ramamohana Rao, learned counsel appearing for some of the petitioners, argued that since such deployment by the State of its employees is

accepted without any demur by the Board, none like the contesting respondents (some of the employees of the Board, who claim to be working with the Board by virtue of the mandate under Section 113 of the Act) can have any *locus standi* to raise the question of the legality of such deployment of the employees of the State to the Board.

The doctrine of *locus standi*, which requires a direct injury to the rights of a litigant approaching the Court, in its classical form, underwent a considerable change. In **Ramko Thomas v. Union of India**[1], a Constitution Bench of the Supreme Court dealing with an objection of *locus standi* held :

> "**...**it raises an important public issue and involves the interpretation of Article 156 of the Constitution of India, as at present advised, we do not think that we can deny locus to the petitioner for raising that issue."

Even otherwise, the history and background of the Presidential Order and the unrest, which preceded the promulgation of the Presidential Order and the persistent claim of the employees belonging to Zone-VI; that the employment opportunities of the '*local candidates*' (a defined expression under Para 2(f) of the Presidential Order) are being scuttled, make it imperative for this court to examine the issue in the larger public interest. The fetters, if any, of the principles of *locus standi*, in our view, must give way in a situation like this.

The next issue that is required to be considered is whether the Presidential order is applicable to the Board.

Under Para 8 of the Presidential Order, various percentages of posts are required to be reserved in favour of local candidates. The percentage of reservation varies with the cadre. Lower the cadre, higher is the percentage of the reservation and *vice versa*. Para 8 is also specific that such reservations are imperative when the posts are sought to be filled up by direct recruitment either by the State or by the local authority.

The question, therefore, is whether the Board is a local authority for the purpose of the Presidential Order. The expression local authority itself is defined in Para 2 (d) of the Presidential order and it reads as follows:

> " 'local authority' does not include any local authority which is not subject to the control of the State Government;"

As can be seen from the language of the definition, it is a negative definition. To decide whether the Board is a local authority for the purpose of the Presidential Order, two aspects require examination; (1) whether the Board answers the description of local authority as known to law; and (2) if it answers, whether it is subject to the control of the State or not.

The expression '*local authority*' is defined under the General Clauses Act, 1897, under Section 3 Sub section 31, which reads as follows:

> " '*local authority*' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control of management of a municipal or local fund;"

The crux of the matter is that an authority, which is entitled to or entrusted with the management of a municipal or local fund, is a local authority.

The Board, under Section 8' of the 1989 Act, is authorized to levy rates, fees, tariffs, rentals and other charges for the various purposes enumerated therein. Therefore, in our view, the Board falls within the definition of the expression '*local authority*' as defined under the General Clauses Act.

The next question is whether the Board is subject to the control of the State Government.

Section 9 of the Act mandates that the Board shall submit to the Government each year the estimated capital and revenue receipts and expenditure for the ensuing year. Section 10 imposes certain restrictions on the powers of the Board to incur expenditure, which is not covered by the statement contemplated under Section 9, barring the cases of extreme urgency in which cases; the Board is mandated to report the same to the Government. Under Section 78W, the Board is required to submit an annual report to the Government upon such matters as may be prescribed by the rules. Sub section (3) mandates that the Board shall furnish to the Government such statistics and returns and particulars with regard to its activities as and when the Government requires the same. Finally, under Section 81F, the Board is mandated to be guided by the directions of the

Government on the questions of policy. It is clear from the above provisions that the Board though an autonomous body, is subject to the control of the State Government in certain aspects and therefore, a local authority for the purpose of Presidential Order.

The next question is to what extent the Board is bound by the Presidential Order.

The Board, being a local authority, is bound by the dictates of Para 8 of the Presidential Order, more specifically, Paras 8 (1)(b)*, 8(1)(c)(ii)Å and 8 (2)(b)+ and reserve the appropriate percentage of posts in favour of the *'local candidates'*.

At this juncture, we must also examine the decision of the Tribunal, which held that the Presidential Order has a limited application to the Board. It was held so in O.A.No.5792 of 2003 and batch on 29-10-2004. The correctness of that decision was challenged earlier before this Court in three writ petitions stated supra. Unfortunately, the issue was not decided by this Court as the petitioners were not preempted the decision by withdrawing the said writ petitions. Dealing with the issue, a Division Bench of the Tribunal held as follows:

> " xxxx. Thus the provisions contained in para 6 and 8 of the presidential order relating to local areas and reservation in favour of local candidates in the matter of direct recruitment to posts whose scale of pay does not exceed 480 per mensem or any amount corresponding to it as may be specified in this regard in the successive revisions of pay scales granted by the State Government from time to time are

> applicable to posts born on the establishment of a local authority. It is significant tonote that inpara-3, 4, 5 of the Presidential Order, there is no mention about the posts born on the establishment of a local authority where as in para-6 and 8 there is mention about the posts born on the establishment of a local authority. This clearly goes to show that para-3, 4 and 5 of the Presidential Order has no application to posts born on the establishment of a local authority."

We have examined the scheme and language of the Presidential Order and we approve the findings recorded by the Tribunal insofar as the applicability of the Presidential Order to the Board is concerned.

Paras 3,4 and 5 of the Presidential Order deal exclusively with the organization of local cadres, allotment of persons to such local cadres and transfer of the persons so allotted from the unit of recruitment concerned to the other units. The expression local cadre is defined in Para 2(e) of the Presidential Order and same reads as follows:

> 2(e) *'local cadre'* means any local cadre of posts under the State Government organized in pursuance of Paragraph 3, or constituted otherwise for any part of the State."

It can be seen from the definition that it deals with the posts under the State Government. Therefore, the service under an instrumentality of the State, such as the Board, cannot be called as service in a post under the State Government. The distinction in law between the

employees of the State and the instrumentalities of the State is well established. While the employment and service under the State are regulated by the provisions of the Part XIV of the Constitution of India, the employment under the instrumentalities of the State is not subject to the provisions of the said part of the Constitution.

It, therefore, follows in the matter of direct recruitment to the various posts under the Board that reservation in favour of the local candidates to the extent indicated under Paras 8(1)(b) , 8(1)(c)(ii) and 8(2)(b) are to be strictly provided and the balance posts are to be made available for open competition in the context of the Presidential Order, i.e., without reference to the mandate of Para 7 of the Presidential Order.

Some of the writ petitions, were posted by the State of Andhra Pradesh to the Board subsequent to the formation of the Board, i.e., after the commencement of the 1989 Act. Admittedly, these petitioners and many more, who are not before this court in this batch of writ petitions, basically are in the service of the State of Andhra Pradesh and belong to the various local cadres of Zone-I to V, created under the II Schedule to the Presidential Order. Under Para 5 of the Presidential Order, transfer of such persons from one zone to other zone or to the city of Hyderabad [a separate unit for the purpose of Presidential Order as prescribed in the I Schedule to the Presidential Order] is impermissible. However, in view of our finding that para 5 of the Presidential Order have no application to a body like the

Board, the provisions referred to earlier will not attract the prohibition contained under para 5 of the Presidential Order if such posting orders are otherwise in accordance with law.

However, under Para 14[1] of the Presidential Order, the declaration is made that nothing in the Presidential Order, shall apply to the various posts enumerated therein, thereby creating a further exception to the discipline of the Presidential Order. Relevant in the present context is Para 14(e), which declares that nothing in the Presidential Order shall apply to any post (other than the post belonging to a non-gazetted cadre in the ministerial technical service in a Major Development Project). Therefore, Engineers of various categories, such as the writ petitioners, though belong to the various Zones-I to V, can be posted to a post under Major Development Project, without reference to the limitations imposed under the Presidential Order. Such a concession is given in the context of Major Development Projects, perhaps (it is so argued by Sri Rama Mohan Rao) on an understanding that persons with specialized skills are required in Major Development Projects, having regard to the importance of such Major Development Projects. Therefore, to facilitate the use of such expertise and skill, wherever it is available, unfettered by the limitations imposed by the Presidential Order, such a provision is made.

A justifiable reason in theory. As to how it was implemented in practice in the present set of cases, we

shall examine later.

The expression '*Major Development Project*' is defined under Para 2(g) of the Presidential Order and it reads as follows:

> " '*Major Development Project*' means a development project the cost or the estimated cost of which exceeds Rs.5 Crores and notified as such by the Central Government ;"

In exercise of the power conferred under Para 2(g) of the Presidential Order, the Government of India notified 14 Major Development Projects in G.S.R. 525[§1]. Relevant in the context are; Manjeera Water Supply Scheme, Second Phase, Singoor Project and Remodeling of Water Distribution system in the twin cities.

Sri Nooty Ram Mohan Rao, learned counsel for the petitioners argued that these various writ petitioners, who were posted to the Board subsequent to the formation of the Board, are posted by the State of Andhra Pradesh because, the discipline of the Presidential Order did not apply to such posts in view of Para 14 of the Presidential Order, as they are posts attached to a Major Development Project, connected with the supply of drinking water to the twin cities. The learned counsel submitted that under Section 17 of the 1989 Act, all public reservoirs, tanks, cisterns, fountains, wells, and bore wells, pumps, pipes, taps, conduits and other works connected with the supply of water to the Hyderabad Metropolitan area, are vested with the Board.

Notwithstanding such vesting, the posts attached to the various works connected with the supply of water to the Hyderabad Metropolitan area and notified to be Major Development Projects under G.S.R. 525, referred to earlier, did not cease to be posts in a Major Development Project, only on account of vesting of such works with the Board and therefore are within the purview of the exception under para 14(c) of the Presidential Order.

The expression Major Development Project is defined under Para 2(g) of the Presidential Order (extracted supra). From the definition it can be seen that the relevant tests to determine whether a Project is a Major Development Project or not, are ; (1) whether the estimated cost of such a Project exceeds rupees five crores; (2) whether such a Project is notified by the Central Government to be a Major Development Project for the purpose of the Presidential Order.

The definition does not refer to the control of such Project. Such a Project, therefore, in our view, can be controlled either by the State Government or by a local authority. As to who is the controlling authority, is irrelevant for the purpose of determining whether a particular Project is a Major Development Project or not, and therefore, falling within the exception under Para 14(e) of the Presidential Order.

We, therefore, accept the submission made by Sri Rama Mohan Rao, that the mere fact that all the works connected with the remodeling of the water distribution system in the twin cities and other connected projects like

Manjira water supply scheme, which were notified under GSR No.525 by the Union of India, were initially under the control of the State of Andhra Pradesh, but vested with the Board by virtue of the operation of Section 17 of the Act, does not make any difference and continue to be excluded from the purview of operation of the Presidential Order to the extent specified under Para 14(e) of the Presidential Order.

But, that does not necessarily make the various appointments, which are in issue in this batch of writ petitions, valid. As already noticed, by us earlier in this judgment that on the formation of the Board, the power of appointment of officers and employees, for the purpose of carrying out the functions entrusted to the Board, is vested with the Board. The various orders of appointments made by the State Government subsequent to the constitution of the Board deploying employees to the Board, in our view, is plainly illegal and in contravention of Section 6 of the 1989 Act. We have already analyzed as to how such appointments came to be accepted by the Board without any application of mind. It must also be mentioned here that even if these appointments were to be treated, as was suggested at the bar, to be appointments made on some kind of deputation, from the State service to the service of the Board, as the Board acquiesced with such appointments and therefore, there was an implied request from the Board seeking deployment of Engineers from the State service, the manner in which such appointments were

made do not appear to be consistent with the philosophy underlying in Para 14(e) of the Presidential Order.

Para 14(e) makes an exception to the general principle of reservation of the posts in favour of local candidates even in the matter of employment under local authority on the ground that in a Major Development Project, expertise and skill, wherever available are required to be utilized, unfettered by the restriction contained in the other parts of the Presidential Order. Therefore, the relevant consideration could only be expertise and skill. However, in practice, such appointments were made on other considerations. To illustrate, Sri Balakrishna Murthy, the learned counsel appearing for some of the respondents, placed before us a Proceeding of the Engineer-in-Chief, Public Health Department, dated 16-04-2001. The relevant portion of the which reads as follows:

> "In the reference Ist cited Sri P.Venkateswarlu, Deputy Executive Engineer while working in Ongole Municipality was suspended from service on the irregularities in allotment of works in Ongole Municipality in the Public Interest pending enquiry from the date of communication of the orders.
>
> In the reference 2nd cited Government have requested to revoke the suspension orders with immediate effect and reinstatement him to duty, pending enquiry into the matter and post him to a far off place.
>
> In view of the above the suspension of Sri P.Venkateswarly, Deputy Executive Engineer is hereby revoked and he is reinstated to duty with immediate effect

pending enquiry into the matter.

On reinstatement, Sri P.Venkateswarlu, is hereby posted to H.M.W.S. & S.B. Hyderabad in One of the existing vacancy as Deputy Executive Engineer.

He is directed to report to the Managing Director, H.M.W.S. & S.B. Hyderabad immediately."

We do not think that anything more is required to demonstrate that atleast some of the appointments made subsequent to the constitution of the Board and made by the State of Andhra Pradesh, apart from other legal infirmities, simply suffer from an illegality on the ground that these appointments to the Board, are not made in consonance with the object for which the Major Development Projects were exempted from the purview of the Presidential Order.

The only other issue that is required to be examined in this batch of writ petitions is; whether Section 113 of the Act, insofar it did not provide an opportunity to the employees of the State governed by the A.P. Public Health and Municipal Engineering Subordinate Service and the A.P. Public Health and Municipal Subordinate Service, other than those, who happened to be working with the Hyderabad Metro Water Works or Sewerage and Sewage treatment works, as on the date of the formation of the Board, to opt for the service of the Board, is unconstitutional on the ground that the provision is violative of Article 14 of the Constitution.

The submission of those employees (some of the petitioners in this batch of writ petitions), who were not, as a matter of fact, working with the Hyderabad Metro Water Works or Sewerage and Sewage treatment works, as on the date of formation of the Board, is that the employees so working as on the date of formation of the Board, who were in the service of the State of Andhra Pradesh, are similarly situated as that of the petitioners, in all respects. Section 113 of the Act, insofar as it gave an opportunity for those employees, who were working with the Hyderabad Metro Water Works or Sewerage and Sewage treatment works, to opt for the service of the newly constituted Board, creates an artificial classification, based on an accident of the posting at that given point of time and therefore, the classification is an irrational classification offending the mandate of the Article 14 of the Constitution.

In our view, the submission is required to be rejected for two reasons;

No doubt, as contended, it was an accident by which some of the employees of the State were working with various works referred to earlier, connected with the supply of drinking water and sewage treatment, but, it is not the said accident, which makes them a distinct class from out of the other employees of the State of Andhra Pradesh, governed by the A.P. Public Health and Municipal Engineering Subordinate Service and the A.P. Public Health and Municipal Subordinate Service regulations. The distinction to these two sets of

employees belonging to the same service is brought about by the fact that the Legislature compelled some of them to continue working with the newly constituted Board, though, under law, such employees had no legal obligation to serve the newly constituted Board, as they neither sought an employment with the Board nor there was any employer-employee relationship between them and the Board. It is obvious that a contract of employment cannot be created by compulsion. For that matter, no contract can be created by compulsion. By definition, a contract is an agreement between the parties to the contract, to do, or abstain from doing, something with free consent. Under the Law of Contracts, any agreement created, otherwise than, by way of a free will of the parties, is void on the ground of duress. The Legislature, in making the provision under Section 113 of the Act, obviously, realized this difficulty and therefore, gave an option to those employees of the State, who happened to be posted in connection with the works related with the supply of drinking water and sewage treatment of Hyderabad city while temporarily compelling them to serve a body with whom there was no legal relationship. The other employees of the State, who are otherwise similarly situated, are, obviously, not faced with a similar situation of having to serve a master, who was not chosen by them. If they wish to relinquish the service of the State and seek employment with the newly constituted Board, it is always open to them, but they cannot complain that they were discriminated. Insofar as

the employees, who were given the option, to be absorbed into the service of the Board, are concerned, the scheme of Section 113 of the Act, is clear that such an option was given to them as some kind of a compensation for the compulsion of having to work with the Board, though they had no such obligation in law, except a newly created mandate under Section 113 of the Act.

The other reason for which the argument is required to be rejected is that the exercise of the option by the employees is, *per se,* not final under Section 113 of the Act (extracted supra). Under Sub section 2 of Section 113 of the Act, the Board is entitled either to accept or reject the options exercised by the employees. The last clause of the Sub section 2;

> "… until their absorption is finally determined by the Board in accordance with the rules and regulations made for this purpose under this Act:"

clearly indicates the same. Therefore, no specific and absolute right is created in favour of any of the employees, thereby enabling others of a compliant of hostile discrimination.

We, therefore, conclude, in the light of the foregoing discussion;

(i) that all appointments under the Board are required to be made by the Board only and the State of Andhra Pradesh has no authority to make any

appointment to any post under the Board.

(ii) that the Board while making such appointments is entitled to adopt any mode of appointment known to law i.e., either direct recruitment or promotion from its own cadres; or even by deputation wherever the Board feels it necessary from the service of the State of Andhra Pradesh or any other legally permissible mode of recruitment. However, such appointments must be made in accordance with an appropriate regulation framed by the Board.

(iii) that in making such appointments, the Board is bound by the discipline of Paras 8 (1)(b), 8(1)(c)(ii) and 8 (2)(b) of the Presidential Order, except to the extent the appointments are relatable to the Major Development Projects vested with the Board. Needless to mention that such a power must be exercised bona fide and in public interest.

Lastly, we hold that in view of our conclusion that all the appointments made by the State of Andhra Pradesh, subsequent to the constitution of the Board, are illegal and having regard to the fact that the Board acquiesced with such appointments for a long time, we

direct the Board to review each one of those appointments and decide whether the services of any one of these appointees is really indispensable for the proper functioning of the Board and such of those employees, whose services are to be found dispensable, shall be repatriated to their parent department.

This whole exercise is required to be completed within a period of three months from the date of this judgment.

J.Chelameswar, J

M.Venkateswara Reddy, J

Mrk/knk
28th June 2006.

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[1] (2000) 2 SCC 81

' - **8. General Principles of Board's Finances**:- For carrying on its operations under this Act the Board shall levy rates, fees, tariffs, rentals, deposits, contributions and other charges, and may vary such rates, fees, tariffs, rentals, deposits, contributions and other charges from time to time in order to provide sufficient revenues,-

(a) to cover operating expenses, taxes and interest payments; and to provide for adequate maintenance and depreciation ;
(b) to meet repayments of loans and other burrowings ;
(c) to finance normal year to tyear improvements ;
(d) to provide for further capital works as are necessary from time to time ; and
(e) to provide for the cost of such other purposes beneficial to the promotion of water supply and construction of sewerage and sewage treatment works in the Hyderabad Metropolitan area as the Board may determine.

W **78. Annual reports, statistics and returns:**- (1) The Board shall, before such date and in such form as may be prescribed by rules,

submit to the Government an annual report upon such matters as may be so prescribed and the Government shall cause such report to be published in the Andhra Pradesh Gazette.

(2) Without prejudice to the provisions of sub-section (1), the Board shall, as soon as may be after the end of each financial year, prepare and submit to the Government in such form as may be prescribed by regulations a report giving an account of its activities during the previous financial year and the report shall also give an account of the activities, if any, which are likely to be undertaken by the Board in the next financial year, and the government shall cause every such report to be laid before the Legislative Assembly of the State as soon as may be after it is received by the Government.

(3) The Board shall furnish to the Government at such times and in such form and manner as the Government may direct, such statistics and returns, and such particulars in regard to any proposed or existing scheme, as the Government may from time to time require.

F **81. Direction by the Government:**- (1) In the discharge of its functions, the Board shall be guided by such direction on question of policy may be given to it by the Government :

Provided that such direction shall be given after consultation with the Board.

(2) In the case of any difference of opinion as to what is a question of policy the decision thereon of the Government shall be final.

* Para 8 (1)(b): in any cadre under a local authority comprising posts carrying a scale of pay, the minimum of which, or a fixed pay which, does not exceed the minimum of the scale of pay of a Junior Assistant, shall be reserved in favour of local candidates in relating to the local area in respect of such cadre.

Å Para 8 (1)(c) (ii): in any cadre under a Local Authority or under any such other Management, as may be notified by the State Government from time to time carrying a Scale of Pay equal to that of posts in the Andhra Pradesh School Education Subordinate Service shall be reserved in favour of local candidates in relating to the local area in respect of such cadre.

± Para 8 (2)(b): in any cadre under a local authority comprising posts carrying a scale of pay, the minimum of which, or a fixed pay which exceeds the minimum of the scale of pay of a Junior Assistant, but does not exceed Rs.480 per mensem [or any amount corresponding to it may be specified in this regard in the successive revision of pay scales granted by the State Government from time to time] shall be reserved in favour of local candidates in relation to the local area in respect of such cadre.

1 **Para 14.** Saving:- Nothing in this Order shall apply to—

(a) any post in the Secretariate of the State Government ;

(b) any post in an Office of the Head of a Department ;

(c) any post in a Special Office or Establishment ;

(d) any post in a State-level office or institution ;

[(e) any post other than a post belonging to any of the non-gazetted categories in the ministerial and technical services in a Major Development Project] ; and

(f) any post of Police Officer as defined in clause (b) of Section 3 of the Hyderabad City Police Act, 1348 F.

§[1] **NOTIFICATION – MAJOR DEVELOPMENT PROJECTS – G.S.R. 525 (E) :-** In pursuance of clause (g) of sub-paragraph (1) of Paragraph 2 of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, the Central Government hereby notifies the following as Major Development Projects for the purposes of the said Order, namely :

S.No.	Name of the Major Development Project
1.	Vamsadhara Project
2.	Godavari Barrage Project
3.	(Repealed).
4.	Tungabhadra Project High Level Canal Scheme, Stage II
5.	(Repealed).
6.	Improvements to Nizamsagar Project
7.	Pochampad Project.
8.	Nagarjunasagar Project including the offices of the Deputy Chief Accounts Officer
9.	Srisailam Project
10.	Krishna, Godavari, Delta Drainage Scheme.
11.	Manjeera Water Supply Scheme, Second Phase
12.	Somasila Project.
13.	Singoor Project.
14.	Remodelling of Water Distribution system in the twin cities